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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

THE WEBSTAURANT STORE, INC.  
2205 Old Philadelphia Pike,  
Lancaster, PA 170625

Plaintiff,

v.

EVERYTHING IS IN STOCK LLC  
D/B/A ELITE RESTAURANT  
EQUIPMENT  
301 Mt. Pleasant Ave.  
Newark, NJ 07104

Defendant.

Civil Action No.: \_\_\_\_\_

**JURY TRIAL DEMANDED**

ELECTRONICALLY FILED

**COMPLAINT**

Plaintiff, The Webstaurant Store Inc. (“Plaintiff”) by and through its attorneys, upon information and belief, allege as follows:

### **PARTIES**

1. Plaintiff is a corporation organized under the laws of Pennsylvania with a principal place of business located at 2205 Old Philadelphia Pike, Lancaster, Pennsylvania, 17602.

2. Defendant Everything is in Stock LLC d/b/a Elite Restaurant Equipment (“Defendant”) is a corporation organized under the laws of New Jersey with a principal place of business located at 301 Mount Pleasant Avenue, Newark, New Jersey 07104.

### **JURISDICTION AND VENUE**

3. This is a civil action seeking damages and injunctive relief for copyright infringement under the Copyright Act of the United States, 17 U.S.C. § 101 *et seq.*, seeking damages and injunctive relief for violations of the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 1200 *et seq.*.

4. This Court has subject matter jurisdiction over this copyright action pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1338(b).

5. This Court has personal jurisdiction over Defendant because, among other things, Defendant is doing business in the State of New Jersey through its online retail website and Defendant has caused injury to Plaintiff and its

intellectual property and competitive position within the State of New Jersey and in this judicial district.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c).

### **NATURE OF ACTION**

7. This is an action for copyright infringement, violation of the Digital Millennium Copyright Act, false association and affiliation, and unfair competition.

8. The copyright infringement cause of action arises under the copyright laws of the United States, 17 U.S.C. §§ 101-810, *et sec.*

9. Plaintiff brings this action to recover damages, expenses, and attorney fees arising from the willful infringement by Defendant of Plaintiff's registered copyrights on valuable photographic images and to obtain injunctive relief against Defendant to cease and desist its infringement and to prevent them from any further unlawful copying and infringement of Plaintiff's copyrights.

10. In violation of the Copyright Act, 17 U.S.C. § 501, *et seq.*, Defendant reproduced and displayed numerous photographic images taken directly from Plaintiff's website without authorization or permission from Plaintiff, the owner of all right, title, and interest in all copyrights covering the photographic images, and despite express copyright restrictions and prohibitions against infringement and

unauthorized use displayed on Plaintiff's website and articulated in previous communications to Defendant.

11. As a direct competitor and through its unlawful copying, Defendant has engaged and continues to engage in unfair competition resulting in harm to Plaintiff's reputation and goodwill in the industry.

### **FACTS COMMON TO ALL CLAIMS**

#### **A. Plaintiff The Webstaurant Store Inc. and its Copyrights**

12. Plaintiff is a leader in providing the food service industry with service, equipment, and supplies which are sold and disseminated throughout the United States via its online retailer, [www.webstaurantstore.com](http://www.webstaurantstore.com) which is publicly accessible by Plaintiff's customers, and Defendant.

13. As part of its course of business, Plaintiff has created photographs and images to sell, advertise, and market products on its website (hereinafter referred to as the "Copyrighted Images"). Plaintiff spent time and resources to create the detailed images that allow customers to properly view each item in order for the customers to make an informed purchasing decision.

14. Plaintiff has registered many of these images with the United States Copyright Office (such registrations collectively referred to hereinafter as "the Copyright Registrations"; a copy of the original registration certificate number VA 2-155-731 and a downloaded copy of registration number VA 2-155-746 from the

Copyright Office Website covering the Copyrighted Images are attached as Exhibits A and B and incorporated herein).

15. At this time and at all times pertinent to this Complaint, [www.webstaurantstore.com](http://www.webstaurantstore.com) has included a copyright notice identifying Plaintiff as the copyright owner of the Copyrighted Images appearing on the website.

16. Plaintiff has not licensed Defendant to use the Copyrighted Images for any purpose.

17. Plaintiff has not granted Defendant permission to use the Copyrighted Images for any purpose.

18. Plaintiff has not worked in partnership with Defendant in creation or presentation of any of the Copyrighted Images.

**B. Defendant Everything Is In Stock LLC d/b/a Elite Restaurant Equipment and its Actions**

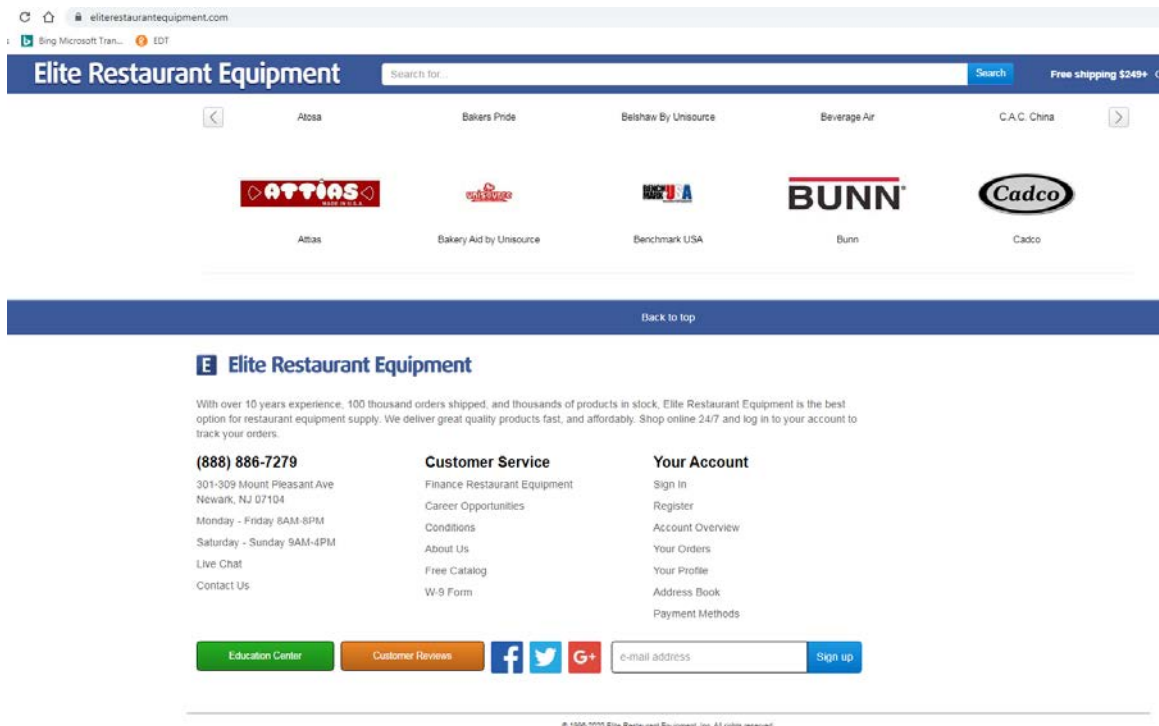
19. Defendant is an online retailer of commercial kitchen equipment and foodservice supplies and is a direct competitor of Plaintiff.

20. Upon information and belief, at some point prior to November 6, 2019, Defendant downloaded, copied, or otherwise reproduced the Copyrighted Images from Plaintiff's website, [www.webstaurantstore.com](http://www.webstaurantstore.com), and displayed the exact images on its website, [www.eliterestaurantequipment.com](http://www.eliterestaurantequipment.com) ("Defendant's website"), for purposes of promoting and selling the items displayed in the Copyrighted Images.

21. Upon information and belief, at some point prior to November 6, 2019, Defendant removed Plaintiff's Copyright Management Information from the Copyrighted Images.

22. On or around November 9, 2019, Defendant was put on notice of the infringement by Plaintiff.

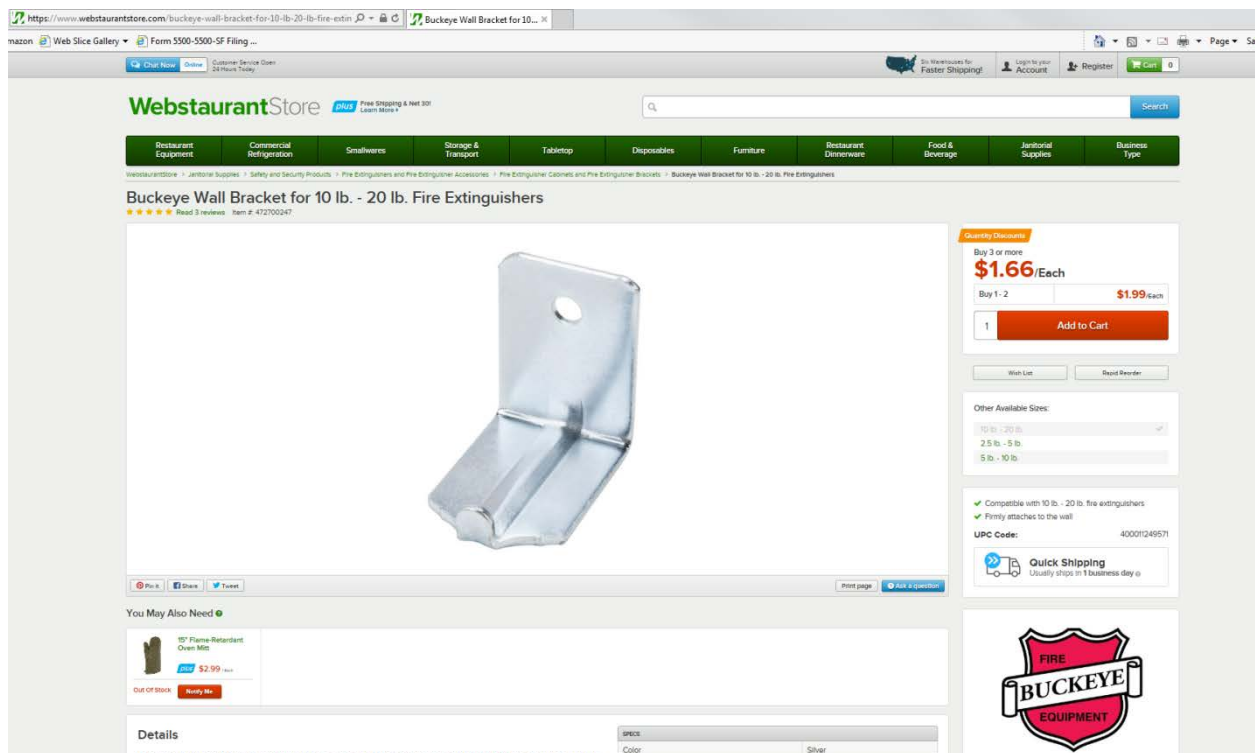
23. Despite Plaintiff's Copyright notice on its website, Defendant displayed and continues to display a fraudulent Copyright notice on its website that reads "© 1996 - 2019 Elite Restaurant Equipment, Inc. All Rights Reserved" showing Plaintiff's Copyrighted Images which falsely represents a copyright of Defendant's over Plaintiff's Copyrighted Images.



24. Defendant has used and continues to use Plaintiff's Copyrighted Images to sell certain products competitive with Plaintiff's products.

25. Examples of Defendant's use of Plaintiff's Copyrighted Images are detailed below and in Exhibits C through E, attached hereto.

26. By way of example, see the screenshot below of Plaintiff's website and the photos for the "Buck Eye Wall Bracket." A full page screenshot of this image is attached hereto as Exhibit D



27. By of sample and comparison, see the screenshot below of the “Buck Eye Wall Bracket” for sale on Defendant’s website, which uses Plaintiff’s identical copyrighted image. Full page screenshots of the below image is attached hereto as

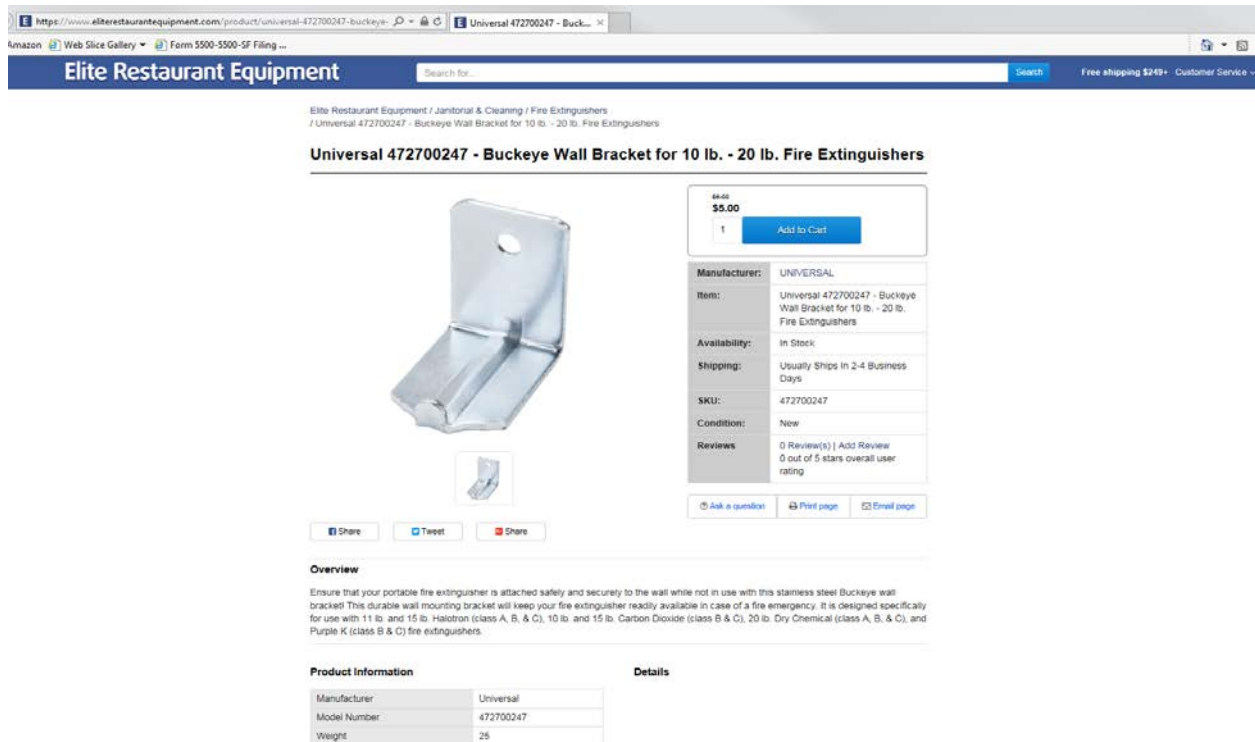
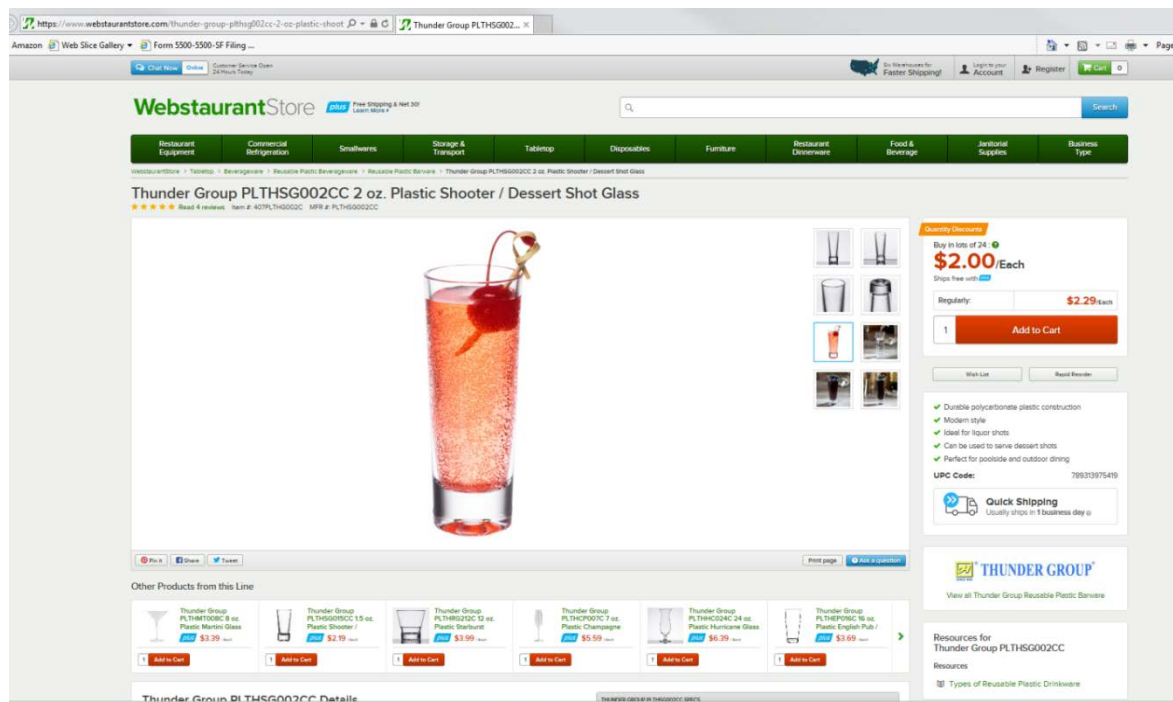


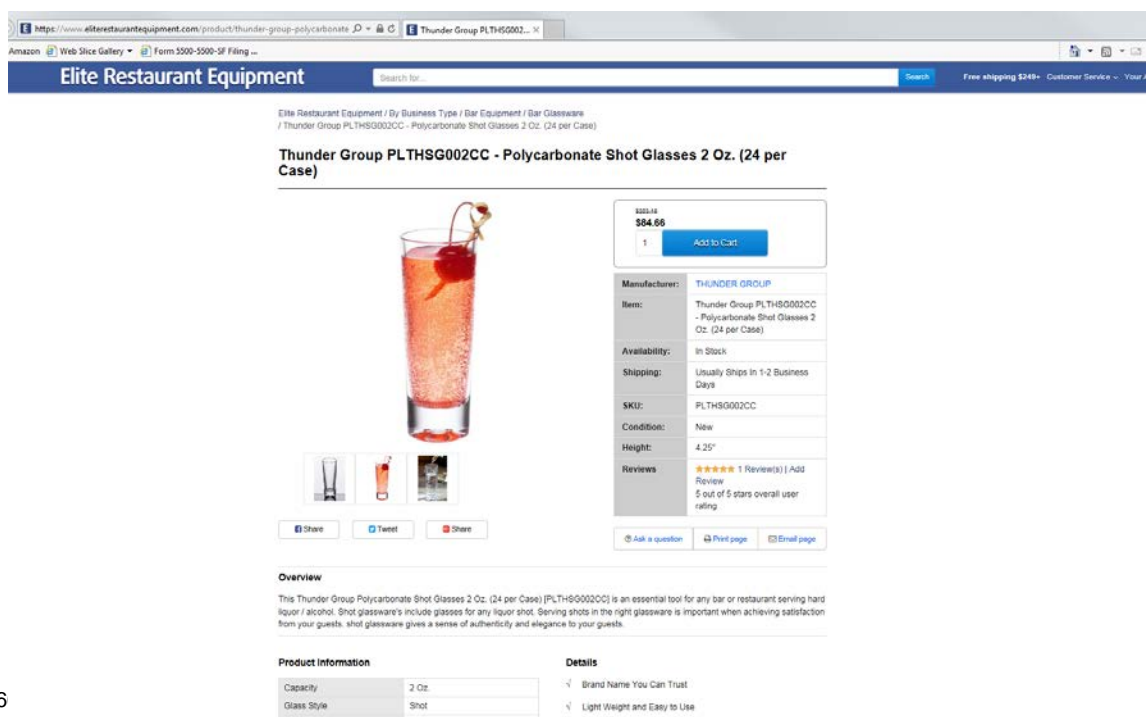
Exhibit D.

28. By way of further example, see the screenshots below of Plaintiff’s website and the photos for the “Thunder Group Plastic Shooter/Dessert Shot Glass.” Full page screenshots of the below images are attached hereto as Exhibit E.





29. By of sample and comparison, see the screenshots below of the “Thunder Group Plastic Shooter/Dessert Shot Glass” for sale on Defendant’s website, which uses the Plaintiff’s identical copyrighted images. Full page screenshots of the below images are attached hereto as Exhibit E.





https://www.eliterestaurantequipment.com/product/thunder-group-polycarbonate... Thunder Group PLTHSG002CC - X

Web Slice Gallery Form 5500-5500-SF Filing ...

**Elite Restaurant Equipment** Search for...

Elite Restaurant Equipment / By Business Type / Bar Equipment / Bar Glassware  
/ Thunder Group PLTHSG002CC - Polycarbonate Shot Glasses 2 Oz. (24 per Case)

**Thunder Group PLTHSG002CC - Polycarbonate Shot Glasses 2 Oz. (24 per Case)**

8203-15  
**\$84.66**

1 [Add to Cart](#)

<b>Manufacturer:</b>	THUNDER GROUP
<b>Item:</b>	Thunder Group PLTHSG002CC - Polycarbonate Shot Glasses 2 Oz. (24 per Case)
<b>Availability:</b>	In Stock
<b>Shipping:</b>	Usually Ships In 1-2 Business Days
<b>SKU:</b>	PLTHSG002CC
<b>Condition:</b>	New
<b>Height:</b>	4.25"
<b>Reviews</b>	★★★★★ 1 Review(s)   Add Review 5 out of 5 stars overall user rating

[Share](#) [Tweet](#) [Share](#)

[Ask a question](#) [Print page](#) [Email page](#)

**Overview**

This Thunder Group Polycarbonate Shot Glasses 2 Oz. (24 per Case) [PLTHSG002CC] is an essential tool for any bar or restaurant serving hard liquor / alcohol. Shot glassware's include glasses for any liquor shot. Serving shots in the right glassware is important when achieving satisfaction from your guests. shot glassware gives a sense of authenticity and elegance to your guests.

Product Information		Details	
Capacity	2 Oz.	✓	Brand Name You Can Trust
Glass Style	Shot	✓	Light Weight and Easy to Use
Height	4.25"		



https://www.eliterestaurantequipment.com/product/thunder-group-polycarbonate... Thunder Group PLTHSG002CC - X

Web Slice Gallery Form 5500-5500-SF Filing ...

**Elite Restaurant Equipment** Search for... [Search](#)

Elite Restaurant Equipment / By Business Type / Bar Equipment / Bar Glassware  
/ Thunder Group PLTHSG002CC - Polycarbonate Shot Glasses 2 Oz. (24 per Case)

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<b>Reviews</b>	★★★★★ 1 Review(s)   Add Review 5 out of 5 stars overall user rating

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Product Information		Details	
Capacity	2 Oz.	✓	Brand Name You Can Trust
Glass Style	Shot	✓	Light Weight and Easy to Use
Height	4.25"		

**COUNT ONE**  
**COPYRIGHT INFRINGEMENT – 17 U.S.C. § 501, et seq.**

30. Plaintiff incorporates the prior paragraphs by reference.

31. Plaintiff is the sole owner of all registered copyrights covering the images infringed by Defendant which were and are prepared, published, and distributed by Plaintiff at [www.webstaurantstore.com](http://www.webstaurantstore.com).

32. By Defendant's unauthorized copying, display, and use of the Copyrighted Images to solicit sales and promote the business and reputation of the Defendant, Defendant has willfully infringed Plaintiff's Copyright Registrations by reproduction, derivative work, public performance, display, and distribution, all without Plaintiff's permission or authorization.

33. Defendant knew or should have known of Plaintiff's rights in the Copyrighted Images and has willfully and intentionally infringed Plaintiff's exclusive rights in the Copyrighted Images under 17 U.S.C. § 106.

34. Defendant's use of the notice "© 1996 - 2019 Elite Restaurant Equipment, Inc. All Rights Reserved" on the website ([www.eliterestaurantequipment.com](http://www.eliterestaurantequipment.com)) showing Plaintiff's Copyrighted Images falsely represents a copyright of Defendant's over Plaintiff's Copyrighted Images.

35. As a result of their wrongful conduct, Defendant is liable to Plaintiff for copyright infringement under 17 U.S.C. § 501.

36. As a direct and proximate result of the copyright infringement detailed herein, Plaintiff has incurred and continues to incur damages in an amount unknown at present and to be determined at trial. Plaintiff is also entitled to any profits of Defendant attributable to the infringement and not taken into account in computing actual damages.

37. In the alternative and at its election, Plaintiff is entitled to seek statutory damages for Defendant's willful acts of infringement in an amount of up to \$150,000 per infringement.

38. Plaintiff has suffered and continues to suffer irreparable injury from Defendant's conduct, and Plaintiff has no adequate remedy at law to protect its rights in the Copyrighted Images to prevent Defendant from continuing its infringement and the injury to Plaintiff.

39. As a direct and proximate result of the copyright infringements detailed herein, Plaintiff is entitled to preliminary and permanent injunctive relief enjoining and restraining Defendant from infringing its Copyrighted Images.

**COUNT TWO**  
**VIOLATION OF THE DMCA – 17 U.S.C. § 1202(b)**

40. Plaintiff incorporates the prior paragraphs by reference.

41. Defendant, without Plaintiff's authorization, intentionally removed Copyright Management Information (CMI) from the Copyrighted Images and thereafter reproduced the images on its website where third parties have access

with reasonable grounds to know that such acts will induce, enable, facilitate, or conceal the copyright infringement in violation of 17 U.S.C. § 1202(b)(1) and (3).

42. Defendant's removal of the CMI from the Copyrighted Images and its subsequent distribution of the images was and is willful and intentional, and was executed with full knowledge of Plaintiff's rights under the Copyright Law, and in disregard of those rights.

43. Defendant's use of the notice "© 2006 - 2019 Elite Restaurant Equipment, Inc. All Rights Reserved" on its website ([www.eliterestaurantequipment.com](http://www.eliterestaurantequipment.com)) showing Plaintiff's Copyrighted Images falsely represents a copyright of Defendant's over Plaintiff's Copyrighted Images.

44. Plaintiff is entitled to recover actual damages suffered as a result of Defendant's DMCA violations, and any profits of Defendant attributable to the violations and not taken into account in computing actual damages.

45. In the alternative and at its election, Plaintiff is entitled to seek statutory damages up to \$25,000 for each unauthorized act of reproduction, distribution, or display of the Copyrighted Images with altered or removed CMI pursuant to 17 U.S.C. § 1203(c). Actual number of CMI removals and reproductions is unknown at present.

46. Plaintiff is entitled to recover costs and attorneys' fees from Defendant pursuant to 17 U.S.C. § 1203(b)(4) and (5).

47. Defendant's violations of 17 U.S.C. § 1202(b)(1) and (3) have caused, and unless restrained by this court, will continue to cause, irreparable injury to Plaintiff not fully compensable in monetary damages. Pursuant to 17 U.S.C. § 1203(b)(1), Plaintiff is entitled to a preliminary and permanent injunction enjoining Defendant from such further violations.

**PRAYERS FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests the following relief:

- A. That Defendant be found by this Court to have committed copyright infringement;
- B. That Defendant, its agents, officers, sales representatives, servants, employees, associates, attorneys, successors and assigns, and any and all persons or entities acting by, through, under or in active concert or in participation with any or all of them, be preliminarily and permanently enjoined by Order of this Court from doing, abiding, causing, aiding or abetting any of the following:
  - 1. directly or indirectly infringing, or causing any third parties to infringe upon Plaintiff's Copyrighted Images;
  - 2. directly or indirectly engaging in, or causing a third party to engage in, any acts or activities calculated to infringe upon Plaintiff's copyright images and/or the reputation or goodwill of Plaintiff, or in any manner to compete unfairly with Plaintiff;

3. directly or indirectly injuring, or causing third parties to injure, the distinctive quality of Plaintiff's Copyrighted Images;

4. further violating Plaintiff's intellectual property rights and goodwill; and,

5. from otherwise competing unfairly with Plaintiff in any manner whatsoever;

C. That Defendant take all necessary and appropriate steps to stop any marketing, promotion, advertising, display, or reproduction of Plaintiff's Copyrighted Images;

D. That the Court issue an Order directing Defendant to provide proof that they have ceased infringing Plaintiff's Copyrighted Images;

E. That Defendant take all necessary and appropriate steps to recall for destruction all copies of the infringing material;

F. That Defendant be required to undertake corrective advertising and marketing steps in order to remedy the infringement and harm caused to Plaintiff;

G. Defendant's acts of infringement and unfair competition be found to be willful and intentional;

H. That Plaintiff be awarded its actual damages and/or a disgorgement of Defendant's profits, direct and indirect, for Defendant's infringements in an

amount to be determined at trial, to be increased to the maximum permitted by law, for their acts of willful infringement;

I. That the Court award Plaintiff its costs, including attorneys' fees, and an assessment of interest;

J. That Defendant be directed to pay over to Plaintiff all damages suffered by Plaintiff as a result of Defendant's acts herein complained of;

K. That Defendant be directed to pay over to Plaintiff their profits from Defendant's acts herein complained of;

L. That the award of Plaintiff's damages and Defendant's profits be trebled as a result of Defendant's willful and deliberate infringement of Plaintiff's rights;

M. That the Court finds this case to be exceptional;

N. That Plaintiff be awarded punitive damages for Defendant's willful, deliberate, and unlawful injurious acts complained of herein; and,

O. That the Court grant such other and further relief as it deems just and proper.



**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

**VOLPE AND KOENIG, P.C.**

Date: March 9, 2020

By: \_\_\_\_\_

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*Attorneys for Plaintiff*